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Bhunja Debnath

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EXAMINER

MCDOWELL, BRIAN E

ART UNIT

PAPER NUMBER

1624

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

BM

DETAILED ACTION
RESPONSE TO ELECTION/RESTRICTION

Applicant's election of group I and election of specie (example 13, page 9 of specification) in the reply filed on 2/5/2009 is acknowledged. The elected specie reads on claims 28-31, 35, 63, 64, and 70. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 32-34, 36-62, 65-69, 71, 72, 75, and 76 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

This application contains claims drawn to an invention nonelected without traverse in the reply filed on 2/5/2009. A complete reply to this action must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's elected specie was found free of the prior art and the full scope of the claims were examined.

An action on the merits of claims 28-31, 35, 63, 64, and 70 is contained herein.

Priority

This application receives the foreign priority date of 10/28/2003, drawn to foreign application 862/CHE/2003.

Specification

The abstract of the disclosure is objected to because of the following. Applicant is reminded that the abstract of the disclosure should not exceed more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claim 64 is objected to because of the following informalities: The claim should be more appropriately stated as the following: "A pharmaceutical composition comprising the compound of claim 30 and a pharmaceutically acceptable carrier, diluent, or excipient". Appropriate correction is required.

Claim Rejections - 35 USC § 112 (2nd Paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28-31, 35, 63, 64, and 70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the absence of the specific derivatizations to the (compound claimed) core or distinct language to describe the structural modifications or the chemical names of derivatized (compounds claimed) of this invention, the identity of said derivatives would

be difficult to describe and the metes and bounds of said derivatives applicants regard as the invention cannot be sufficiently determined because they have not been particularly pointed out or distinctly articulated in the claims.

Claims 28-31, 35, 63, 64, and 70 are also rejected for the limitation “and their pharmaceutically acceptable compositions”. The examiner is uncertain to what pharmaceutically acceptable compositions are supposed to be embraced by the claims, thus the metes and bounds are not clear. It is recommended that the aforementioned limitations be removed from the claims to overcome this rejection.

Claim Rejections - 35 USC § 102

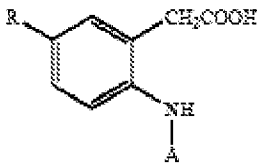
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28, 29, 63, and 70 are rejected under 35 U.S.C. 102(e) as being anticipated over Fujimoto *et al.* (US Patent 7,202,364).

Fujimoto *et al.* disclose the following compounds (see col. 48):

<div style="text-align: center;">  </div>			
Compound	R	A	m.p., MS
(b)	Cl	6-Cl-5-indanyl	132-134° C.
(c)	Cl	3-quinolizyl	193-195° C.
(d)	H	1-Cl-2-naphthyl	156-158° C.
(e)	CH ₃	1-Cl-2-naphthyl	141-143° C.
(f)	Cl	2-naphthyl	128-130° C.
(g)	Cl	1-Cl-2-naphthyl	156-158° C.
(h)	H	2-F-4-cyclopropylphenyl	104-106° C.
(i)	CH ₃	3-methyl-6-quinolizyl	172-175° C.
(j)	H	4-(4-F-phenyl)-2-F-phenyl	M - 1 = 338, M + 1 = 340
(k)	H	6-Cl-5-indanyl	133-134° C.
(l)	H	4-phenyl-2-F-phenyl	M - 1 = 320, M + 1 = 322
(m)	H	3-quinolizyl	182-184° C.
(n)	H	2-naphthyl	131-133° C.
(o)	CH ₃	2-naphthyl	130-132° C.
(p)	Cl	2-Cl-4-cyclopropylphenyl	128-129° C.
(q)	CH ₃	2-Cl-4-cyclopropylphenyl	114-116° C.
(r)	Cl	4-phenyl-2,3,5,6-tetra-F-phenyl	181-182° C.
(s)	CH ₃	4-phenyl-2,3,5,6-tetra-F-phenyl	156-157° C.
(t)	CH ₃	3-Cl-4-cyclopropyl-6-F-phenyl	M - 1 = 332, M + 1 = 334
(u)	Cl	4-(4-F-phenyl)-2-F-phenyl	M - 1 = 372, M + 1 = 374
(v)	H	4-(4-OCH ₃ -phenyl)-2-Cl-phenyl	150-151° C.
(w)	Cl	4-(4-OCH ₃ -phenyl)-3-F-phenyl	100-102° C.
(x)	H	4-phenyl-2,6-di-Cl-phenyl	191-192° C.
(y)	H	4-phenyl-2-Cl,6-F-phenyl	162-163° C.
(z)	CH ₃	4-phenyl-2-Cl,6-F-phenyl	176-177° C.
(aa)	CH ₃	4-phenyl-2,6-di-Cl-phenyl	177-178° C.
(ab)	CH ₃	4-(3-CH ₃ O-phenyl)-2,3,5,6-tetra-F-phenyl	164-166° C.
(ac)	Cl	4-(3-CH ₃ O-phenyl)-2,3,5,6-tetra-F-phenyl	171-173° C.
(ad)	CH ₃	4-(4-F-phenyl)-2,3,5,6-tetra-F-phenyl	155-156° C.
(ae)	Cl	4-(3,4-methylenedioxyphenyl)-2,3,5,6-tetra-F-phenyl	M - 1 = 452
(af)	CH ₃	4-cyclohexyl-2-Cl-phenyl	133-135° C.

See compounds (d) and (n) in particular, wherein Ar₁ = 2-naphthyl or 1-Cl-2-naphthyl, p = m = 0, and R⁵⁻⁷ = H that read on the aforementioned claims and are therefore anticipated.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 63-64 and claim 70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term “solvate” is not found in the disclosure as originally filed, thus the examiner asserts that applicant was not in possession of said “solvate” of the claimed compounds at the time the application was originally filed.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN MCDOWELL whose telephone number is (571)270-5755. The examiner can normally be reached on Monday-Thursday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BM

/James O. Wilson/

Supervisory Patent Examiner, Art Unit 1624